

Application Serial No.: 10/072,032
Attorney Docket No.: 2A08.1-011
PATENT

REMARKS

The Office Action mailed January 22, 2004, has been received and reviewed. Claims 23 and 24 remain pending and are not amended by this Response. Declarations under 37 C.F.R § 1.132, by Larry Hunn, Norman Pomerleau, Frank O'Neill and Allen Stein are submitted herewith for consideration.

Claims 23 and 24 stand rejected under 35 U.S.C. § 103 as allegedly obvious over Howard '852 in view of Capel '809. Applicant respectfully traverses and requests reconsideration.

The Examiner has applied the sample books (12c and 12e) of the Howard '852 reference to Applicant's claimed "display panels"; and has attached a red-marked copy of Fig. 1 of Howard '852 indicating with reference no. 12e the binder portion of the sample books, which is applied to Applicant's claimed "display surfaces". Such characterization of the elements of the Howard '852 reference is contrary to the ordinary meaning one skilled in the art would ascribe to the claim language under consideration, and the rejection based on this characterization of the reference cannot properly be maintained. The Howard '852 reference makes clear that reference nos. 12c and 12e identify "sample books" containing pieces of carpet collected and bound together. See Howard '852, column 1, lines 5-7 and column 2, lines 6-16. One skilled in the art would not consider these sample books to be a "display panel" as presently claimed. Additionally, the binder portion of the books identified by the Examiner with reference no. 12e does not display any material (and typically would not be used to display material) as suggested by the Examiner, and so would not be considered by one skilled in the art to be a "display surface" as presently claimed. See Declaration of Larry Hunn, ¶ 9 (Attachment 1 hereto, hereinafter "Hunn"). Accordingly, when properly interpreted, the cited references do not disclose or suggest Applicant's claimed structure.

The devices taught by the Howard '852 and Capel '809 references are completely different kinds of display devices, which are used in very different manners to display entirely different types of materials. The Howard device displays multiple sample books or binders containing small carpet samples in a way that allows a

Application Serial No.: 10/072,032
Attorney Docket No.: 2A08.1-011
PATENT

customer to remove the individual sample books from the rack and peruse the numerous small samples of carpet bound in the sample book. On the other hand, the Capel device displays entire rugs, rather than small samples of carpet. Because the entire rug is hung from the Capel display by clips 94, this type of device typically would not even incorporate any "display panels", as presently claimed. Because of these considerable differences in both structure and purpose, one skilled in the art would not seek to combine disparate elements from the individual references as proposed, absent some improper hindsight reconstruction based on the Applicant's teaching.

In addition, one skilled in the art would not be motivated to combine the Howard '852 and Capel '809 references in the manner proposed by the Examiner, because the references themselves teach away from such a combination, and because the proposed combination would result in a device that was at least partially inoperable for the purposes stated in the references. And even if such a combination were made, it still would not render the presently-claimed invention obvious. The Examiner correctly acknowledges that the Howard '852 reference does not disclose or suggest any *pivotal* connection of panels to a rack. Nevertheless, the Examiner asserts that Capel '809 teaches pivotal connections, and that it would have been obvious to combine these pivotal connections with the "panels" of the Howard '852 reference.

But the Howard '852 patent specifically states that one of its objectives is to maintain "a preadjusted acute angularity" of the carrier brackets 25 for the sample books 12 with respect to the support bar 11 of the rack. See Howard '852, column 1, lines 11-14. The Howard device incorporates a specified opening structure and "flaps" 30, 42 on its sliding carrier brackets 25 to maintain the sample books in this "predetermined acute angle position". Column 2, lines 32-35. The brackets 25 (and the sample books 12 carried thereon) then can slide back-and-forth along the support rod 11 at a fixed angular position, without "canting". Column 2, lines 51-63. Modifying the Howard device as the Examiner has proposed, to include some "pivotal" mounting mechanism, would run completely counter to this stated objective of maintaining a fixed angularity of the brackets 25 and books 12. Thus, the primary reference itself

Application Serial No.: 10/072,032
Attorney Docket No.: 2A08.1-011
PATENT

specifically teaches away from the combination proposed by the Examiner, and one skilled in the art clearly would not be motivated to modify the Howard device in the manner proposed. This is further supported by the Hunn declaration submitted herewith.

In addition, providing some pivotal connection between the sample books and the rack of the Howard device, as proposed by the Examiner, would be inconsistent with the need for the Howard device's sample books 12 to be removable from the bracket hooks 25 to permit a customer to flip through the sample pages of the books, as such devices are typically used, and as a result would render the device at least partly inoperable for its intended manner of use. This further evidences the lack of motivation for one skilled in the art to combine the references as proposed.

Objective evidence of the non-obviousness of the present invention is presented herewith in the form of Declarations by Larry Hunn (Attachment 1 hereto), Norman Pomerleau (Attachment 2 hereto), Frank O'Neill (Attachment 3 hereto) and Allen Stein (Attachment 4 hereto). *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). These declarations demonstrate that the present invention satisfies a long-felt but unsolved need in the trade, by enhancing the ability to display multiple samples simultaneously and assisting the seller in differentiating products to the customer, as well as objective evidence of the failure of others to make the invention. These declarations also provide objective evidence of considerable commercial success and the nexus between the commercial success of the Applicant's display device and the claimed features of the device. Such objective evidence or "secondary considerations", when presented, must be considered in evaluating the non-obviousness of the claimed invention. *Vandenberg v. Dairy Equip. Co.*, 740 F.2d 1560, 1567, 224 USPQ 195, 199 (Fed. Cir. 1984).

Application Serial No.: 10/072,032
Attorney Docket No.: 2A08.1-011
PATENT

CONCLUSION

In view of the above comments, it is believed that all grounds of rejection are overcome and that the application is in full condition for allowance. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,

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